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ANATOMY OF THE CASE OF ARAB COUNTRIES AND THE WTO

*Bashar H. Malkawi**

Introduction

Arab countries are attempting to broaden their engagement in the multi-lateral trading system in a manner that has many implications. Not only have some Arab countries either acceded or are in the pipeline of acceding to the World Trade Organization (WTO), but their new commitments coincide with reorientations in their economic strategies. The purpose of this article is to examine the involvement in and implications of the multi-lateral trading system on Arab countries. The proposition in this article is that the WTO is not a perfect institution. In WTO accession, politics matter more than commerce or trade. I argue that joining the WTO is a balancing act. As a result of economic liberalization, there would be losers in the industries of Arab countries. However, governments should compensate for any loss by ensuring better access to capital and establishing training programs to develop the skills of those dislocated.

The article proceeds to discuss in section I representation of Arab countries in the multilateral trading system. Section II examines accession of Arab countries to the WTO and some of the obstacles they face in their accessions. Section III discusses the Fourth WTO Ministerial Conference held in Qatar in 2001. Section IV studies participation of Arab countries in the WTO dispute settlement mechanism. Section V analyzes the impact of the multilateral trading system on Arab countries in selected sectors such as agriculture and oil. Section VI uncovers the opposing positions

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of Arab officials and civil societies in Arab countries toward globalization and the multilateral trading system.

I. Arab Countries' Representation in the Global Multilateral Trading System

The General Agreement on Tariffs and Trade (hereinafter GATT) 1947 was negotiated by twenty-three countries. As an agreement, it never itself came into force. GATT was always applied provisionally through the Protocol of Provisional Application.¹ The GATT operated as an agreement and a pragmatic institution.² The GATT 1947 was a code under which countries would conduct their mutual commercial relations. The purpose of GATT was to establish an open system of world trade between the contracting parties. It was the beginning for a series of negotiations that ended up with the establishment of the WTO in 1994. The end of the Uruguay Round brought with it legalization of world trade politics after GATT was considered a geopolitical document created to contain the spread of non-market ideology to other countries. As some legal scholars and WTO members claim, the WTO has become a rule-based trade body. The Uruguay Round results both clarified and extended existing GATT obligations in virtually every facet, i.e., goods, services, and intellectual property.

From the birth of the GATT in 1947, until 1993, few Arab countries have joined the GATT-type multilateral trading system.³ Like many other developing countries, Arab countries, after the end of colonialism, called for a new world economic order that would take their development needs

¹ In order to enter into force, article XXVI.6 of GATT 1947 requires governments with a minimum share of world trade to deposit their instruments of acceptance. However, few countries did so. Therefore, GATT was applied through the Protocol of Provisional Application. See Protocol of Provisional Application to the General Agreement on Tariffs and Trade, signed Oct. 30, 1947, 61 Stat. A2051, 55 U.N.T.S. 308.

² As the acronym of the GATT indicates, GATT's scope was limited only to tariffs and trade in goods. GATT 1947 did not contain rules aimed at the liberalization of trade in services and other sectors. An example of GATT 1947 pragmatism is article XXV (3) & (4) which calls for one vote per nation and decisions to be taken by majority vote. However, in practice, consensus was developed among parties.

³ Egypt, Kuwait, Morocco, Mauritania, and Tunisia were the only countries to join the GATT 1947. For example, Egypt and Tunisia first acceded to the GATT provisionally. Provisional accession means that GATT contracting parties extend GATT rights, including tariff concessions, to acceding countries if the latter reciprocate. However, acceding countries did not have a direct right regarding tariff concessions negotiated prior to their accession to the GATT. In other words, acceding countries were not entitled to compensation in case tariff concessions were withdrawn.

into account.⁴ Thus, the United Nations Conference on Trade and Development (UNCTAD) was born. The UNCTAD was set up as a permanent organ of the U.N General Assembly in 1964, and it meets every four years.⁵

In UNCTAD, negotiations were conducted by the bloc approach, with “the Group of 77” representing the developing countries. UNCTAD can be best described as the developing countries’ GATT. Over the span of its life, UNCTAD’s most cited achievement is the Generalized System of Preferences (GSP) whereby developed countries give preferential, non-reciprocal, and non-discriminatory treatment to developing countries’ trade. Although the GSP has functioned with relative success, its limited coverage of beneficiary countries and products, coupled with conditions that beneficiary countries must meet before being eligible for such a preferential treatment, led to disgruntled feelings on the part of recipients. Moreover, many of UNCTAD’s tasks now fall within the contours of the WTO, whose membership is essentially the same. However, UNCTAD still has a role to play, even though the WTO made UNCTAD relatively anachronistic.⁶

II. *The Political Economy of Multilateralism in Arab Countries*

The absence of some Arab countries from participation in the WTO is due to the fact that the U.S. is blocking the establishment of working parties to examine their applications.⁷ Since 2000, Jordan and Oman have

⁴ The main reason for not joining the GATT system was the doctrine of reciprocity embedded in GATT. The doctrine of reciprocity obliges countries to reciprocate their concessions. See Adeoye Akinsanya & Arthur Davies, *Third World Quest for a New International Economic Order: An Overview*, 33 INT’L & COMP. L. Q. 208 (1984).

⁵ UNCTAD held its first meeting in 1964 in Geneva, Switzerland. See Kele Onyejekwe, *International Law of Trade Preferences: Emanations from the European Union and the United States*, 26 ST. MARY’S L. J. 425, 447 (1995) (the foundation of the new international economic order movement was the theory of “structuralism”, which called for a fundamental realignment of the international order to correct deep imbalances between developed and developing countries that would, if uncorrected, perpetuate underdevelopment).

⁶ See Jagdish Bhagwati, *A Stream of Windows: Unsettling Reflections on Trade, Immigration, and Democracy* 29-35 (1998) (recalling the glory of UNCTAD under the leadership of Raul Prebisch as an institution that was ahead of the curve. The memory of the institution has faded in OECD countries where it has become commonplace in some influential quarters to think of UNCTAD as if it was instead UNWASHED and UNKEMPT. It has been criticized that the institution focuses on politics rather than economics, and that it is too partisan).

⁷ To join the WTO, a working party needs to be established to negotiate terms

been the last Arab countries to accede to the WTO. If the U.S. is sincerely engaged with Arab countries, it should allow them entry into the WTO at an accelerated rate.

Of the 148 current members of the WTO, there are only eleven Arab countries. Algeria, Comoros, Iraq, Lebanon, Libya, the Palestinian Authority, Saudi Arabia, Somalia, Sudan, Syria, and Yemen have all lined up for accession to the WTO. However, applications of some of Arab countries for admission to the WTO are “clinically dead”.⁸ Other Arab countries’ applications are at a “standstill”.⁹ The U.S. supports applications of accession for only handpicked Arab countries that are considered “peaceful”, however this term maybe interpreted.¹⁰ The following is a discussion of the status of Arab countries’ accession to the WTO and the hurdles they face in their accessions.

A. Iraq

Iraq became an observer at the WTO overnight.¹¹ Iraq has already adopted several orders that liberalize trade policy.¹² For example, a new

of accession, and the General Council, which operates by consensus, must agree to form the working party. See Raj Bhala, *Challenges of Poverty and Islam Facing American Trade Law*, 17 ST. JOHN’S J. LEGAL COMMENT. 471, 508 (2003).

⁸ See Daniel Pruzin, U.S. Blocks Iranian WTO Application; Syria Prevented from Placement on Agenda, 19 Int’l Trade Rep. (BNA) 36 (Jan. 3, 2002) (stating that Syria’s request for membership in the WTO was blocked because of Syria’s backing for the Arab League trade boycott of Israel).

⁹ See Daniel Pruzin, U.S., EU Push Saudis to Improve Market Access Offers for WTO Entry, 17 Int’l Trade Rep. (BNA) 1654 (Oct. 26, 2000).

¹⁰ See Gary G. Yerkey, U.S. and Saudi Arabia Sign Agreement that Could Lead to Free Trade Negotiations, 20 Int’l Trade Rep. (BNA) 1353 (Aug. 7, 2003) (citing the term “peaceful countries” used by [former] USTR Robert Zoellick).

¹¹ See Brussels Resists Demand for Iraq WTO Seat, Financial Times, Jan. 26, 2004, at 4 (the EC resisted a demand by the U.S. and Britain, backed by U.S. Vice-President Dick Cheney, that Iraq be given a WTO seat. The U.S. argues that a WTO seat for Iraq would help its reconstruction and adaptation to a market economy. On the other hand, the EC argues that Iraq does not have a government that has control over its trade policy). Ultimately, however, Iraq was granted, on a silver plate, a seat at the WTO as observer, which would allow it to attend WTO meetings but not participate in decision-making or table proposals for negotiations. See Iraq Takes First Step to Join WTO, Financial Times, Feb. 12, 2004, at 14.

¹² See Judith Richards Hope & Edward N. Griffin, *The New Iraq: Revising Iraq’s Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq’s Decimated Economy*, 11 CARDOZO J. INT’L & COMP. L. 875, 877, 878 (2004) (citing the Coalition Provisional Authority order no. 12, which liberalized trade policy by suspending a number of tariffs and trade restrictions. The Coalition Provisional Authority also issued order no. 39, which instituted far ranging free-market reforms

foreign investment law was passed in 2003 permitting 100 percent foreign ownership of firms in all sectors of the economy, aside from oil and other mineral extraction. Iraq has also modernized its existing intellectual property regime by using the laws of Jordan and the United Arab Emirates as examples, to bring it into compliance with international standards. Iraq's overall purpose with these changes is to assist its participation in the WTO.

Opening the fragile Iraqi banking system, where lending to the private sector made up one-half of 1 percent total commercial bank assets lending in 2004, would create a regime more favorable to mega-foreign banks. Iraqi banks may not have enough capitalization to compete with foreign banks. The subsidized agriculture sector is also set for reform.¹³ Similar to the example of Iraqi banks, reform in the Iraqi agriculture sector would benefit the agri-businesses of the U.S. and other major agricultural exporters. Likewise, Iraqi higher education is also slated for market-oriented reform. It is no longer the responsibility of the government to find graduates jobs; college graduates would be responsible for their own career searches.

In a country ravaged by war, where only a small percentage of U.S.-appropriated funds have been put into action, and prime reconstruction contracts are limited to companies from the U.S., Iraq, and force-contributing nations such as Australia and Poland, has little time for the WTO work.¹⁴ Furthermore, with many decades of a paternalistic cradle-to-grave

throughout Iraq in every sector, except for natural resources, banking and insurance. For banks, after the end of a five-year period, there will be no limitations on the entry of foreign banks).

¹³ See Ariana Eunjung Cha, *Iraqis Face Tough Transition to Market-based Agriculture*, Wash. Post, Jan. 22, 2004, at A01 (Iraq has 5 million agricultural workers, mostly family farmers. In old Iraq, the state provided seeds, fertilizers, pesticides, sprinklers, and tractors at low cost. The Coalition Provisional Authority is determined to create a capitalist economy where the state provides little, if any, support. The U.S. and Australia [major agriculture exporters] are taking the lead in rehabilitating the Iraqi agricultural sector. After first purchasing and then destroying Iraqi wheat in 2003 because it was of low quality, the gap in food supply was made up with \$190 millions' worth of wheat from Kansas, Oklahoma, and Texas, courtesy of the U.S.).

¹⁴ See Resolution of Cultural Property Disputes 23-29 (The International Bureau of the Permanent Court of Arbitration ed., 2004) (discussing, in part, the tragic looting of many of Iraq's museums as a recent example of how vulnerable cultural property is to theft, damage, and destruction. As time has gone by, legal rules have been developed for the protection of cultural property during hostilities, represented in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. One of the obligations included in article 5 of the Convention is that occupying forces must, as far as possible, support the competent national authority of the occupied country in protecting cultural property. It is an obligation of stewardship.

government policy, it is hardly conceivable that such reforms would make life easier for Iraqi citizens. Iraq needs gradualism, not an instant trade liberalization, to advance from a closed economy dominated by state-owned monopolies and subsidies toward a competitive and modern economy open to world trade.

B. *Algeria*

Algeria has been seeking WTO membership for seventeen years, beginning in June 1987. Its accession negotiations are moving at a snail's pace.¹⁵ A sticking point is the import ban on alcohol.¹⁶ Some of the stumbling issues in Algeria's accession to the WTO include the introduction of new agricultural export subsidies, application of tariff-rate quotas, and whether WTO agreements would automatically take precedence over any conflicting internal regulations. Due to these hurdles, it seems that Algeria might top China in terms of the length of time before being able to secure WTO membership.

C. *Lebanon*

Of the twenty-three original contracting parties to the GATT 1947, only two, Lebanon and Syria, were from the Arab Middle East. However, Lebanon withdrew from GATT four years later. Today, Lebanon is not

This did not take place in Iraq. Neither the U.K. nor the U.S. is a party to the Hague Convention. The experience of UNESCO in many conflict situations shows that only the tiniest fraction of looted materials will be returned). For more on the dispute between the U.S. and EC over a procurement bar on bidding on \$18.6 billion in reconstruction projects in Iraq see USTR Argues Iraq Contract Exclusion Fall within WTO Rules, *INSIDE U.S. TRADE*, Dec. 12, 2003 (the U.S. argues that Iraq's Coalition Provisional Authority, along with the Defense Department which is responsible for awarding procurement contracts, is not a listed entity covered by the WTO GPA. As such there is no need to invoke [article XXIII of the GPA] "essential security" exception to justify the use of noncompetitive procedures in awarding these contracts. In the alternative, the U.S. can argue that these contracts are foreign aid which is not subject to the U.S. commitments under GPA).

¹⁵ See Daniel Pruzin, *WTO Members Discuss Accession of Algeria, Lebanon, Iraq Explores Membership Process*, 20 Int'l Trade Rep. (BNA) 2079 (Dec. 18, 2003) (Algeria talks stumbled over its ban on imports of alcohol. The Algerian parliament introduced a ban, which was proposed by religious factions, on imports of alcohol as part of the budget bill that would expire at the end of 2004).

¹⁶ Other WTO members are likely to argue that the basis of the import ban on alcohol is not religious, but, rather, to protect the Algerian brewery industry, especially wine.

a member of the WTO because it withdrew from the GATT in 1951. Lebanon did not attempt to join the GATT/WTO until 1999.¹⁷

In 1950, Lebanon notified the contracting parties of its intention to withdraw from the GATT.¹⁸ The only hint for withdrawal was the need for “readapting”.

One may suspect that the reason for Lebanese withdrawal was the consideration by Israel to join the GATT.¹⁹ Lebanon had at its disposal an alternative option that it could have invoked, rather than an outright withdrawal. Article XXXV of the GATT clearly stipulates that the GATT will not apply between a contracting party (Lebanon in that case) and an acceding one (Israel) if either one of them does not agree to its application to the other party “at the time of accession”.²⁰ Resorting to article XXXV is more convincing, especially that article XXXV was added at the first session of the contracting parties in 1948, well before Lebanon’s withdrawal.²¹ Therefore, Lebanon could have employed article XXXV if Israel was to accede to the GATT.

¹⁷ The Working Party on accession of Lebanon was established in Apr. 1999.

¹⁸ Then Lebanese Foreign Minister Philippe Takal communicated his government’s intention to withdraw from GATT 1947 without further elaboration for the reasons of withdrawal. In his communication he said, “I have the honor to inform you that owing to the necessity of readapting decided to denounce the General Agreement on Tariffs and Trade signed in Geneva on 30 Oct. 1947, and this is in conformity with Paragraph 5 of the Protocol of Provisional Application signed on the same date. Lebanon wishes nevertheless to remain a member of the General Conference of the ITO”. See Notifications of Withdrawal: Lebanon, Dec. 27, 1950, 77 U.N.T.S. 367.

¹⁹ See Israel’s Present Position in Relation to G.A.T.T., 2:2 Economic News 75, 76-78 (Dec. 1949) (The advantages of Israel’s adherence to GATT would mean that, within the framework of the MFN doctrine, it would find itself in possession of rights similar to those of other GATT states. The main disadvantage of acceding to the GATT is the restriction of freedom to enter into bilateral agreements affecting trade policy. Since Israel was only at the first stages of developing its economy, it might be premature to give up now Israel’s liberty to find out which principles it has to choose as definite). In 1947, the government of the United Kingdom, acting as a mandatory power for Palestine, opened negotiations for the accession of Palestine to the GATT. Negotiations for Palestine’s accession resulted in Schedule XIX, that contained concessions granted by the government of the United Kingdom. However, after the United Kingdom ceased to act as a contracting party to the GATT with respect to Palestine, Israel made no declaration indicating its willingness to be bound by GATT. See The Position of Palestine in Relation to the Agreement: Item 8 of the Agenda to the Annecy GATT Conference, Apr. 29, 1949, GATT Doc. No. GATT/CP.3/17, p. 1.

²⁰ India set a precedent when it became the first country to invoke article XXXV in 1948 with respect to South Africa. Egypt, Morocco, and Tunisia invoked article XXXV of GATT with respect to Israel upon their accession to the GATT. See Ariel M. Ezrahi, *Opting Out of Opt-Out Clauses: Removing Obstacles to International Trade and International Peace*, 31 L & POLY IN INT’L BUS 123, 138 (1999).

²¹ See GATT Analytical Index: Guide to Gatt Law And Practice 961 (6th ed. 1994).

Lebanon's talks for accession to the WTO are still at early stage. The working party on Lebanon accession met in 2003, for the first time since 1999.²² Thus far, Lebanon tabled its offer for market access in goods and services. Lebanon agreed to reduce tariffs on agricultural and industrial goods to 12.5 percent. Further, Lebanon promised to liberalize mobile phone services, fixed-line telecommunications, and port services.

If one can draw on the experience of China and Taiwan accession to the WTO, Lebanon may not accede except after Syria's accession to the WTO. In the alternative, Lebanon and Syria may accede to the WTO simultaneously to reduce tensions between the two neighbors. Either way, Lebanon's efforts would be handicapped by Syria's own accession.

D. Syria

Like Lebanon, Syria followed suit and withdrew from the GATT.²³ Today, Syria is not a member of the WTO because it withdrew from the GATT in 1951. Syria did not attempt to join the GATT/WTO 2001.²⁴

Syria has taken several steps on the path of economic reform. These include increased imports, such as vehicles, and permitting the private sector to venture into such fields as banking, telecoms, TV production, and higher education. In the context of these reform initiatives, Syria applied for WTO membership in October 2001. However, four years have passed since it submitted its application, and no accession is on the horizon.

Syria is a rogue state, and the U.S. State Department claims that it supports international terrorism and the Arab trade boycott on Israel, and harbors elements of the former Iraqi regime. It is unlikely that Syria's application to the WTO will be honored anytime soon, especially after the U.S. Congress passed the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003.²⁵ The Act orders the U.S. President to impose sanctions against Syria by blocking U.S. exports of any item on the U.S. Munitions List. Moreover, the U.S. President must also choose two or more sanctions from a menu of six options, including: prohibiting all

²² See Pruzin, *supra* note 15.

²³ See Notifications of Withdrawal: Syria, June 7, 1951, 90 U.N.T.S. 324.

²⁴ A formal request for accession under Article XII of the WTO was sent to the Director-General of the WTO by Syria on Oct. 10, 2001 and was circulated to WTO members on Oct. 30, 2001.

²⁵ See Syria Sanctions Bill Passes Senate with Lugar Amendment, *INSIDE U.S. TRADE*, Nov. 14, 2003, at 13.

exports of U.S. products to Syria with the exception of food and medicine, prohibiting U.S. businesses from operating or investing in Syria, calling for U.S. financial institutions to sever dealings with the Commercial Bank of Syria, freezing of assets belonging to certain Syrian individuals and government entities, and prohibiting aircraft of any air carrier owned or controlled by Syria to take off, land in, or fly over the U.S. The President has the flexibility to waive sanctions if he determines it is in the U.S. national security interest. U.S. trade sanctions on Syria may have little impact on its economy since trade between the two countries amounted to only \$472 million in 2003. Additionally, Syria neither operates flights to the U.S. nor receives U.S. aid.

E. *Libya*

Libya submitted its accession application in November 2001.²⁶ Nonetheless, the application was blocked by the U.S. because Libya allegedly supports terrorism. On July 27, 2004, WTO members agreed to set up a working party to examine Libya's accession. However, despite headways in the US-Libyan relationship, Libya still has a long road ahead. The U.S. has adopted a step-by-step approach toward Libyan's accession.²⁷ In April

²⁶ A ministerial committee was established to prepare for negotiations with the WTO immediately after the Deputy Director-General of the WTO concluded his visit to Tripoli in Oct. 2001.

²⁷ The U.S. Liaison Office in Tripoli stated that the pace of travel to Libya is still hampered by visa difficulties. Thus, the U.S. Liaison Office advises those who plan to travel to Libya to apply for a visa three to six weeks in advance. See Gray G. Yerkey, U.S. May Soon Lift Ban on Travel to Libya, *Bowing to Pressure from Business, Congress*, 21 Int'l Trade Rep. (BNA) 289 (Feb. 12, 2004). The U.S. terminated the need for license from the Treasury Department to trade with Libya, allowed direct air service and regular charter flights, and lifted the prohibition against financing through direct loans, credits, and guarantees by the U.S. Ex-Im Bank and other government agencies. In addition, on the same date, the U.S. terminated the national emergency declared in 1986 under the International Emergency Economic Powers Act with respect to Libya, and released frozen assets belonging to Libya. New regulations were issued that would allow U.S. companies to interact with U.S. made products that were illegally exported or re-exported to Libya before the U.S. trade embargo was removed. However, the U.S. still bans programs of the Overseas Private Investment Corporation in Libya. Moreover, the State Department still classifies Libya as a state sponsor of terrorism, thus prohibiting, with the exception of farm products and medicine, purchasing U.S. military equipment such as radioactive materials and explosives, and restricting, through export controls, U.S. high-tech and encrypted exports such as computers and software. In order for Libya to be taken off the list of countries supporting terrorism, there must be efforts by the State Department, notification of Congress, and formal or informal congressional consent.

2004, the U.S. terminated the application of the Iran Libya Sanctions Act to Libya. Moreover, in September 2004, the U.S. lifted its eighteen year ban on trade between the two countries. The U.S. would help Libya modernize its economy and infrastructure, which is largely dependent on gas and oil, ease price controls, and invigorate a working private sector.

F. *The Palestinian Authority*

In 2001, the Palestinian Authority sent a twenty-four member delegation for a two-day visit to the WTO to address the issue of its own WTO accession.²⁸ The Palestinian Authority adopted a foreign trade regime similar to that of Israel.²⁹ However, the U.S. and Israel are still likely to oppose the Palestinian Authority application because of the tension between the Palestinians and Israelis.³⁰ The WTO agreements are trade agreements, and discussions of broader international law issues should be left to other institutions.

Even if there is no tension between the Palestinians and Israelis, the U.S. and Israel may raise a technical point in opposition to Palestinian accession. While under article XXXIII of GATT 1994, a “government” possessing full autonomy in the conduct of its external commercial relations was required for accession, article XII of the WTO Charter allows a “state” or “separate customs territory” to join its membership ranks. The Palestinian Authority is clearly a government, but whether the Gaza Strip and the West Bank form a state is an open question.³¹

²⁸ See Palestinian Authority Prepares to Pursue WTO Membership; Observer Status First Step, d82 WTO Rep. (BNA) (May 17, 2001).

²⁹ *Id.* As a result of the peace truce, a customs union is formed between Israel, the West Bank, and Gaza Strip.

³⁰ *Id.* The U.S. and Israeli objections prove that WTO accession is not a rule-based process but rather power-based.

³¹ Israel usually refers to the Gaza Strip and the West Bank as the Territories or Areas. If the U.S. and Israel raise the technical point, the Palestinian Authority may argue that the U.N. gave its predecessor, the Palestinian Liberation Organization (PLO), an observer status, a position that allowed the PLO to participate in its discussions. See Press Release G.A. 9427, U.N. GAOR, 52nd Sess., 89th mtg. (1998). Moreover, the U.S. extended its GSP scheme to cover Palestinian goods. As such, Palestinian goods would enter the U.S. at a preferential rate. Therefore, this implies a statehood status. See Proclamation No. 6778, 60 Fed. Reg. 15, 455 (1995).

G. Saudi Arabia

Saudi Arabia has been an observer since 1986. It formally submitted its admission application in 1993. One would question why the Saudis have extended the period of accession to GATT/WTO, despite the fact that they are prominent players in the World Bank and the IMF, which mandate and advocate liberalization policies.³² Whether Saudi Arabia's accession to the WTO in 2004 is "imminent reality", the fact remains that one cannot predict when it might happen.³³ Accession could take place as late as 2006 or 2007.

With respect to its WTO application, Saudi Arabia has opened its markets to telegraph and fax services, Vsat and GMPCS services, Internet provision services, and online information and database retrieval services to non-Saudi operators. Saudi Arabia has also passed several trade-related laws, including regulations that liberalize capital markets. However, as a result of the Saudis putting some 100 reservations in market access where liberalization would not apply, negotiations might take a sharp turn.³⁴

³² One can speculate that due to the nature of the Saudi economy and its potential impact on world trade, WTO members are taking a tougher stance on its accession to the WTO. See Tomer Broude, *Accession to the WTO: Current Issues in the Arab World*, 32 J.W.T. 147, 153 (1998) (stating that the Saudi economy ranks among the twenty largest economies in the world and among the fifteen largest importers).

³³ The accession negotiations ground to a halt in early 2001 after Saudi Arabia published a negative list on investment, prohibiting access to foreigners in key sectors such as oil exploration. However, Saudi Arabia's accession to the WTO received a new momentum after the departure of Osama Faqih, former Saudi commerce minister, who was considered an obstacle for moving the accession talks, and the appointment of Hashim Yamani as the new one. Moreover, the conclusion of some sixteen bilateral deals with trading partners, including the one with the EC in Sep. 2003, provided another impetus for negotiations. Some trade diplomats suspect that Saudi Arabia may wrap up negotiations in 2004. See U.S., *Saudi Arabia Stalled on Insurance Law*, INSIDE U.S. TRADE, Sept. 17, 2004 (the most contentious negotiations are with the U.S. over market access in financial services and insurance [branching rights for foreign insurers. Generally, branching is preferred over establishing subsidiaries since the latter require more capital and are less efficient]). Feeling a sense of urgency, the Saudis are ready to travel to capitals to resolve outstanding issues. The Saudis' push for accession is due in part to the desire to improve the strained relations with Washington after Sep. 11). An interesting point in Saudi Arabia's accession to the WTO is whether it should be classified as a developing, advanced developing, or developed country. If it is classified as a developing country, it may qualify for benefits, if any, accruing to developing countries in their accession to the WTO.

³⁴ See Saudis Flexible on Easing Investment Curbs During WTO Accession Talks, Report States, d1 WTO Rep. (BNA) (Feb. 5, 2004) (the latest draft report of WTO's working party on accession cites that foreign investment in audiovisual, satellite

Some of these reservations can be qualified as measures to preserve Islamic values and traditions. As an example, Saudi Arabia's media interests (audiovisual), which are state-censored for content, are occupied with patriotic programming and are off-limits to non-Saudi interests. Global media interests such as Viacom will not be allowed to own shares in TV production companies or invest in joint production projects with Saudi media companies. If other WTO members raise objections to these reservations, Saudi Arabia can argue that France was permitted a "cultural exemption" clause during the Uruguay Round negotiations. Other Saudi reservations, such as those on prepaid mobile phone cards, can hardly qualify to preserve Islamic values.

Saudi Arabia's accession to the WTO goes beyond concerns over its import ban on booze and cigarettes. There are several other concerns with respect to the Saudi application. The application of customs valuation, import licensing, and precedence of international law over domestic law are major concerns for trading partners of Saudi Arabia. Other obstacles include the huge subsidies paid to rich farmers for growing wheat in the Saudi desert. In addition, the Dominican Republic's and Honduras' sudden requests for bilateral talks with Saudi Arabia mean further delays. Some U.S. congressmen oppose Saudi Arabia's accession because of its support of the Arab trade boycott of Israel, the Saudi human rights record, and fears about terrorism. Finally, the U.S. State Department's designation of Saudi Arabia, under the International Religious Freedom Act of 1998, as a Country of Particular Concern could prove a sticking point in negotiations.

Regardless of Saudi progress towards trade liberalization, realistically, after accession, Saudi Arabia may need one to two years at minimum to learn the mechanics of the WTO, and develop a large legal staff to assist in pursuing effective membership in the WTO. The latter point seems elusive considering that many Arab countries have small delegations dedicated to the WTO. In addition, Saudi Arabia may need more time to familiarize itself with the thousands of pages of WTO trade rules.

transmission, land/air transport, real estate are off-limits. The report's appendix sets out some seventy-three products that are prohibited from importations. They include alcohol, pork, satellite internet receivers, mobile phones fitted with cameras, video boosters, animal fertilizers, asbestos, used tires, mobile phone chips, prepaid mobile phone cards, and electronic greeting cards).

H. *Sudan*

Sudan, usually a forgotten country when speaking about international trade, even though it is an important exporter of gum Arabic, and the largest country in the African continent, is outside of the WTO club.³⁵ Sudan has adopted an open-oriented policy that includes trade liberalization.³⁶ However, Sudan is unlikely to accede to the WTO anytime soon, especially in light of the sanctions imposed on it due to suspicions it supports terrorist organizations. Moreover, a proposed legislation in the 108th and 109th U.S. Congress (H.R. 5414) could cut off foreign tax credits and tax deferrals to U.S. companies doing business in Sudan until it ends genocide in the Darfur region. Similarly to Syria, Sudan is usually considered a pariah state.

I. *Comoros*

Comoros, a small island state, is another forgotten Arab country when speaking about WTO membership. Comoros has been the recipient of preferential treatment from developed countries, such as under the Canada Least Developed Country Tariff treatment and by the U.S. under the GSP program and the African Growth and Opportunity Act.³⁷ Furthermore, Comoros has taken several steps to reform its trade regime.³⁸ Since Comoro has a vulnerable economy with a weak supply capacity, WTO members

³⁵ The WTO had set up a working party on Sudan's accession since 1994.

³⁶ The policy of Sudan focuses on enhancing the agricultural sector, which employs about 70 percent of the population, attracting foreign investors, including Islamic and Arab funds by reducing taxes and tariffs, reducing the inflation rate from 166 percent to less than 7 percent, and keeping currency prices stable. See Jim Phipps & Christopher H. Johnson, *Foreign Law in Review: 2001*, 36 INT'L LAW. 901, 939 (2002).

³⁷ See Trade and Development Act of 2000, 106 P.L. 200, 114 Stat. 251 (2000). Comoros is dependant on the exports of basic commodities such as spices, and official development assistance.

³⁸ In 1996, Comoros accepted article VIII of the IMF's Articles of Agreement which requires countries to refrain from imposing restrictions on the making of payments and transfers for current international transactions, engaging in discriminatory currency arrangements, or multiple currency practices without the approval of the IMF. Comoros agreed to pursue sound economic policy. Comoros also took trade reforms as part of the IMF-supported programs such as Structural Adjustment Facility. For example, in 1994, Comoros received \$1.90 million credit under Structural Adjustment Facility to support its economic reforms. See Robert Sharer et al., *Trade Liberalization in IMF-Supported Programs* 9, 30 (1998) (Comoros began Fund-supported programs with a relatively restrictive trade regime. However, there was a marked reduction in its trade restrictiveness).

must be moderate in their demands with respect to its membership in the trade body if it requests to join.

J. *Somalia*

Somalia has also been largely overlooked in the context of the WTO. It has undergone market-oriented policies.³⁹ After years of conflict and chaos, Somalia is experiencing more political stability that should help it revive its shattered economy and rebuild the role of its manufacturing sector. Since many of its industries would not be competitive internationally, WTO members, when considering Somalia's accession, must be moderate in their demands for accession.⁴⁰

K. *Yemen*

Yemen is another Arab country that is not a member of the WTO. Modern laws have been enacted that are comparable to those of other Arab countries.⁴¹ Islamic law has been codified in Yemen covering, among other areas, trade. Among trade reforms, Yemen removed import restrictions for many products, introduced a four-band tariff structure with rates ranging from 5-30 percent, and harmonized excise tax rates. Additionally, Yemen opened its wheat trade and distribution of petroleum products, and removed a price-fixing cartel in the trucking sector. Yet, Yemen's accession to the WTO will still face many obstacles.

L. *The Arab League*

There have been calls by Arab countries to grant the Arab League an observer status at the WTO. These calls so far have been received by deaf ears. Admitting the Arab League to the WTO would strengthen the position of Arab countries in the organization. The Vatican has been sitting as an observer since 1997 without the intention for applying for

³⁹ See U.S. Dep't. Of Com. & Library of Cong., *Somalia: A Country Study* (1993) (stabilization and macroeconomic adjustment programs had been implemented during 1980s under the auspices of international credit and aid agencies. There has been a privatization of wholesale trade and financial services).

⁴⁰ Crop and livestock production, forestry, and fisheries are Sudan's main items of exports. *Id.*

⁴¹ See Phipps & Johnson, *supra* note 36, at 953.

membership. It is preposterous to delay granting the Arab League a seat to observe the WTO at work.

As to the boycott on Israel, precedent exists permitting an Arab country to accede to the GATT while simultaneously maintaining its boycott on Israel. This was the case of the accession of the United Arab Republic, a union between Egypt and Syria, to the GATT.⁴² Therefore, accession of Arab countries to the WTO should not hinge on dismantling their trade boycott on Israel.

III. *The Venue of the Fourth WTO Ministerial Conference: Qatar (2001)*

The WTO must hold its Ministerial Conference at least once every two years. The General Council of the WTO decides on the date and venue of the Ministerial Conference.⁴³ The Gulf state of Qatar, during the 1999 Seattle Ministerial Conference, voluntarily offered to host the WTO Ministerial Conference. In 2001, the fourth WTO Ministerial Conference was held in Doha, Qatar, that brought the WTO ever closer to Arab countries, and was the largest international meeting in the region.⁴⁴

Qatar is a small country, and it is not an active member of the WTO, similar to Canada, Chile, Singapore, or South Africa. Despite these limitations, Qatar was found to have the required infrastructure to host the

⁴² The Arab boycott was justified as a reasonable measure considering the state of war between the United Arab Republic and Israel. During the accession negotiations, some contracting parties raised concerns that the United Arab Republic was participating in the Arab League boycott of Israel. Members of the working party supported the concept that such a boycott did not preclude accession, as long as it was for political purposes and not a disguised trade protection measure. See GATT ANALYTICAL INDEX, *supra* note 21, at 602-03.

⁴³ There are many factors considered in selecting the venue of the WTO Ministerial Conference. Those include the capacity to host the conference, proximity of the conference venue to corporate hotels such as Marriott, Sheraton, and Hyatt, and airport(s), transportation, local assistance, and security arrangements. Usually, WTO Secretariat officials visit the prospective city to determine its infrastructure's ability to host such a large meeting.

⁴⁴ The other WTO Ministerial Conferences were, consecutively: Singapore (Dec. 9-13, 1996), Geneva (May 18-20, 1998), Seattle (Nov. 30-Dec. 3, 1999), and Cancun (Sep. 10-14, 2003). The sixth Ministerial Conference will be held in Hong Kong (Dec. 13-18, 2005). The usual date for WTO Ministerial Conferences is the Nov. to Dec. period. During this period in 2001, the Islamic month of Ramadan would come. Being sensitive to Islamic values, it was decided to hold the fourth Ministerial Conference earlier (Nov. 9-13). If WTO members did not decide so, trade negotiators would be hungry. Trade negotiators would not provide the anticipated outcomes.

meeting.⁴⁵ It is possible that Qatar was chosen for reasons other than its infrastructure and the WTO claim of wanting to integrate Arab countries into the WTO system.

The 1999 Seattle Ministerial Conference was a blow to the efforts of WTO members to launch the “Millennium Round”.⁴⁶ The WTO could not sustain another failure. As such, Qatar was the proper venue to remove the Seattle stain. In terms of geography, Qatar is far way from the anti-globalization protestors and anarchists that disrupted the Seattle Conference.⁴⁷ Even if protestors decided to travel to Qatar, they were unlikely to flock in large numbers, considering travel expenses and other logistical hurdles.⁴⁸ Protestors were likely to have a low key profile in Doha. Therefore, to outflank a Seattle reoccurrence, Doha was chosen as it is far from demonstrations, riot police, tear gas, and downtown arrests.

The sequence of events of the September 11, 2001 tragedy in the U.S. highlighted the difficulty of bringing Arab countries ever closer to the WTO, which was intended by holding the fourth Ministerial Conference in the region. After September 11, the U.S. suggested changing the venue to Chile, after the refusal of South Africa to host the Conference. If WTO members were sincerely interested in bringing Arab countries within the framework of the WTO, they could have insisted on maintaining Qatar as the designated venue. Luckily enough, the momentum was sustained, and Qatar remained the venue.

Over the course of several WTO Ministerial Conferences, delegations of some Arab countries to the Conferences were small in number. Generally, Arab delegations consisted of a trade minister and two senior trade officials. This reflects the fact that Arab countries do not have enough financial resources to send full-fledged delegations.⁴⁹ The small numbers of Arab

⁴⁵ See Qatari Trade Minister Stresses Need for Proceeding with WTO Gathering, d425 WTO Rep. (BNA) (Sept. 26, 2001) (Qatar was prepared to make available 4,440 rooms for attending officials, some in terms of luxury villas and cruise ships. The proposed venue was the Sheraton Doha Conference and the International Exhibition Center).

⁴⁶ There are many reasons for the failure of the Seattle meeting. At this point, external factors will be counted: Violent protests against the WTO resulted in 600 arrests, \$3 million in property damages, and between \$12 million and \$22 million in lost business for Seattle merchants. *Id.* Protestors delayed and disrupted several Seattle meetings.

⁴⁷ The largest jam ever in Qatar in which police interfered was the McDonald-Burger King price war. The two fast-food restaurants engaged in a price war after Burger King opened in Qatar.

⁴⁸ While, if the WTO Ministerial Conference was held in Vancouver, Canada, protestors would have flocked in vans by thousands across the U.S. borders.

⁴⁹ The WTO provides three travel tickets, for more you buy your own ticket. Other international agencies may handle travel expenses such as WIPO or USAID.

delegations could be easily compared with hundreds of trade negotiators representing other countries.⁵⁰ Delegations consisting of small numbers would put Arab countries at a disadvantage, especially if, due to an imbalanced calendar, several meetings were held at the same time.

Non-governmental organizations (NGOs) are permitted to attend WTO Ministerial Conferences.⁵¹ NGOs are subject to an accreditation process by specifying how their activities are linked to the work of the WTO and sources of finance.⁵² However, these requirements are also a potential drawback for NGOs from Arab countries.⁵³

Over the course of the five WTO Ministerial Conferences held so far, few Arab business associations and NGOs have participated. Moreover, they were limited in representation to one or two persons. For example, in the third Ministerial Conference held in Seattle in 1999, among approximately 739 associations and NGOs that took part, only three were from Arab countries.⁵⁴ The number of Arab associations increased dramatically in the fourth Ministerial Conference held in Doha in 2001.⁵⁵ The lack

⁵⁰ For GATT Brussels Ministerial Meeting in 1990, the U.S. sent an army of 600 personnel and Japan 300. Perhaps out of security reasons, U.S. trade delegation to the Doha Ministerial Conference had a low turnout of less than 100.

⁵¹ NGOs' attendance is limited to plenary sessions but not other meetings.

⁵² See Non-Governmental Organizations, Facilities Provided During the WTO Ministerial Conference in Singapore, Aug. 26, 1996, PRESS/TE 012. An obvious reason for the accreditation process is to prevent NGOs with "hidden agenda" from participating. Coincidentally, the title of the document refers to trade and environment. One assumes that some environmental NGOs have hidden agenda.

⁵³ Some Arab NGOs might be interested in the work of the WTO although their activities are not linked to the work of the WTO.

⁵⁴ Two were from Egypt (Group of Fifteen-Federation of Chambers of Commerce, Industry and Services and the Central Agricultural Co-op Union) and one from Sudan (Sudanese Business Men and Employers Federation).

⁵⁵ Out of approximately 365 associations and NGOs participating in the Conference, 12 Arab associations participated: six were from Jordan (Arab Knowledge Management Society, Arab Society for Certified Accountants, Arab Society for Intellectual Property, Licensing Executives Society-Arab Countries, National Society for Consumer Protection, PhRMA East/Africa Committee), one from Lebanon (Arab NGO Network for Development), three from Egypt (Centre for Trade Union and Workers Services, Group of Fifteen-Federation of Chambers of Commerce, Industry and Services, National Association for Human Rights and Development), one from Syria (International Confederation of Arab Trade Unions), and one from Saudi Arabia (Women and Children International). The number of Arab associations and NGOs in the fifth Ministerial Conference in Cancun in 2003 dropped back to 8 out of 1002: three from Egypt (Afro-Asian People's Solidarity Organization, Center for Trade Union and Workers Services, Federation of Egyptian Industries), two from Jordan (Arab Knowledge Management Society, Pharmaceutical Research and Manufacturers of America-Jordan), one from Lebanon (Arab NGO Network for Development), one from Iran (Confederation of Iranian Industry), and one from Tunisia (Union Tunisienne de l'Agriculture et de la Pêche).

of expansive Arab associations and NGOs participating in WTO Ministerial Conferences can be attributed to a lack of interest or understanding of the WTO mechanics or, more importantly, due to lack of financial resources.

Inter-governmental organizations also participate in WTO Ministerial Conferences. For example, in the Doha Ministerial Conference of 2001, sixty-two inter-governmental organizations were permitted to participate. One noticeable group that was missing from participation in WTO Ministerial Conferences was the League of Arab States, one of the oldest regional organizations of states in the world. Despite various attempts by the League to obtain an observer seat at WTO Ministerial Conferences as well as at various meetings, the League's efforts have thus far been fruitless.⁵⁶ Several WTO members have objected to such requests on the pretext that the League of Arab States promotion of boycott of Israel is contrary to WTO rules. Clearly, the objections of these members are politically motivated rather than legally justified. WTO rules provide the means for integrating the functions of international, regional, and country-specific inter-governmental organizations, including the IMF, World Bank, and the OECD.⁵⁷ In return for blocking the League of Arab States' application for observership, Arab countries such as Egypt blocked applications of other inter-governmental organizations.⁵⁸ For example, the U.N Commissioner for Human Rights was not granted observer status in the Council for Trade in Services.

At the end of the Ministerial Conference in Qatar, members marked the launch of new round of multilateral trade negotiations. Aside from being considered "developing countries", the question that arises is what Arab countries achieved during the meeting. One of the immediate benefits, from the perspective of Qatar, is that the new round was dubbed "the

⁵⁶ For instance, the League of Arab States was not permitted to participate as an observer in the WTO Ministerial Conference in Cancun in 2003. Hussein Hassouna, Ambassador of the League of Arab States to the U.S., Address and Remarks at American University Washington College of Law (Apr. 21, 2004). On the other hand, Qatar courteously hosted the Israel delegation in the Fourth Ministerial Conference in Doha. Usually, the WTO issues invitations to members and other organizations to attend its Ministerial Conferences.

⁵⁷ Article V.1 of the WTO Charter states that the General Council shall make "appropriate arrangements" for effective cooperation with other inter-governmental organizations that have responsibilities related to those of the WTO. Thus, members of the WTO recognized, though without any specific reference to any inter-governmental organization, other legal entities as part of the wider economic order.

⁵⁸ See Robyn Eckersley, *The Big Chill: The WTO and Multilateral Environmental Agreements*, 4 GLOBAL ENVTL. POL. 24 (May 2004) (admission of observers has been dealt with on an *ad hoc* basis. The continuing impasse on the observer problem can be resolved only at the General Council level).

Doha Development Agenda”.⁵⁹ Additionally, Qatar boosted its convention and tourism industry, even if such a boost was only temporary.⁶⁰ However, there have not been any long-range economic benefits from hosting the Conference.

The WTO Ministerial Conference in Qatar offered Arab countries the opportunity to demand concessions from developed countries. Arab countries missed that opportunity because of self-interest in gaining global prestige by holding the Ministerial Conference in the region and fostering closer relationships with the U.S. Arab countries did not solidify their positions in the WTO Ministerial Conference in Qatar. In the WTO Ministerial Conference in Qatar, coalitions from other developing countries managed to derive concessions from developed countries.⁶¹ For example, the alliance between India, Argentina, Mexico, and Israel, among other countries, succeeded in including anti-dumping and countervailing rules in the Doha Round to clarify and improve WTO agreements on these matters. African countries succeeded in obtaining a waiver from WTO rules for the Conotu Agreement, which provides former colonies and African, Caribbean and Pacific countries (ACP) favorable access to the EC market. Moreover, African countries reached a deal with developed countries on intellectual property and public health aimed at placating concerns about the impact of patent protection on the availability of essential medicines in African countries.

An Arab alliance should be formed so that they can form peer pressure to demand concessions from developed countries in WTO Ministerial Conferences and meetings. The alliance should also afford the help requested by its constituent members. The Arab alliance is needed, considering that Arab countries are now faced with the daunting task of understanding complex and extensive trade negotiations in which they will participate over the next several years, while still digesting the raw deals of the Uruguay Round.

⁵⁹ The “Doha Development Agenda” will enter the history of trade rounds along with the Tokyo Round and the Uruguay Round. It is of notice that the Doha Ministerial Declaration of 2001 uses the term “work program” instead of the politically sensitive term “trade round”. For example, the term “work program” was used seventeen times while “round” was referred to only one time in the context of the Uruguay Round. See Doha Ministerial Declaration, Nov. 14, 2001, WTO Doc. No. WT/MIN(01)/DEC/1.

⁶⁰ Qatar may have built facilities such as rooms that cost million of dollars to be used only for one time.

⁶¹ See Inaamul Haque, *Reflections on the WTO Doha Ministerial: Doha Development Agenda*, 17 AM. U. INT’L L. REV. 1097 (2002).

IV. Arab Countries' Participation/Non-Participation in the WTO Dispute Settlement Mechanism

Arab countries are frequent users of the WTO dispute settlement mechanism. The WTO dispute settlement system has been in effect for nearly ten years. Over the span of that period, of a total of ninety-two WTO members who participated in dispute proceedings, no Arab country has ever initiated a case before a panel as a complainant.⁶² Further, through the end of 2004, Egypt has been the only Arab country that has been a respondent in a case.⁶³ This state of affairs may indicate that Arab countries are not rule breakers. Another interpretation is that Arab countries choose to settle their disputes with other WTO countries through consultations. Reasons for this include high fees charged by international law firms for representation in the litigation, or fear of spillover effects on financial aid.

Lack of participation in WTO dispute settlement proceedings may also be attributed to the minuscule level of the Arab countries' contribution to world trade, contrasted with \$1 billion a day of trade between the U.S. and EC.⁶⁴ However, this is by no means a completely valid reason to not participate in WTO dispute settlement proceedings. Argentina, for example, which accounts for only 0.6 percent of world trade, is one of the most challenged nations before the WTO, after the U.S. and the EC. Argentina has also filed nine complaints in the WTO. Additionally, India is an active participant in the WTO dispute settlement cases despite the fact that its share of world trade is under 0.8 percent.

Another reason that Arab countries are not frequent users of the WTO dispute settlement system is a lack of expertise and knowledge of com-

⁶² See Dispute Settlement Body, Overview of State of Play of WTO Disputes, Nov. 18, 2002, WTO Doc. No. WT/DSB/W/209/Add.1.

⁶³ See Egypt-Definitive Anti-Dumping Measures on Steel Rebar from Turkey, Aug. 8, 2002, WTO Doc. No. WT/DS211/R. In the Steel Rebar case, in which Egypt presented an excellent argument, its counsel was Van Beal and Bellis of Brussels, Belgium. See Internet Chat with E.U. Commissioner Pascal Lamy and Egyptian Trade Minister Youssef Boutros-Ghali, New WTO Round: Talking Trade-What's Going on?, at <http://europa.eu.int/comm/chat/lamy9/index_en.htm> (Last visited May 30, 2005).

⁶⁴ See Grary G. Yerkey, U.S. Trade Policy Overlooks Middle East Region, Could Hurt War on Terrorism, PPI Study Says, 20 Int'l Trade Rep. (BNA) 323 (Feb. 13, 2003) (the Muslim world has experienced a 75% drop in its share of world export since 1980. As of 2001, the entire Muslim world received only \$13.6 billion in FDI, barely more than Sweden all by itself).

plicated WTO law, with some complaints crossing between several WTO agreements. Bringing a case before a WTO panel is an extensive process that requires preparing commercial data, studies, econometric modeling, and substantial documentation. However, with the passing of time and the growing knowledge of the WTO law, one might expect more use of the WTO dispute settlement system.

Litigating a WTO case, which may take years, is very costly. For example, Brazil, in its 2004 case against U.S. upland cotton subsidies, incurred an estimated \$2 million in legal fees at the WTO panel level alone.⁶⁵ Unless some Arab countries share the legal and financial burdens of proceedings at the WTO, it might be very difficult for a single Arab country to initiate a case alone. Therefore, spreading the cost among Arab countries would make the process more affordable for Arab countries to be involved.

In addition, power relations may play role in limiting Arab countries' participation in trade disputes. For example, Egypt may have been in a Scylla and Charybdis position when it decided to settle its dispute with the EC out of court.⁶⁶ If Egypt supported the U.S. in the sensitive GMO case, it would have upset its relations with the EC. By the same token, if Egypt did not support the U.S., it would have lead to a souring in trade relations between the U.S. and Egypt. Ultimately, Egypt chose to settle the dispute with the EC without litigation. Perhaps, without pressure, Egypt may have pressed ahead with the dispute against the EC.

Arab traditions and history may outweigh all other reasons for the limited participation by Arab countries in WTO dispute settlement cases. International litigation is not a preferred choice for Arab countries. Negotiations and compromises are the traditional path. It is a question of style. One hopes that, in the future, the process may become more confrontational, in order for Arab countries to press their interests in trade disputes without compromising, which otherwise would occur in negotiations. Through litigation Arab countries would send a signal to other

⁶⁵ On appeal, Brazil is likely to incur more costs. For more on the case see United States—Subsidies on Upland Cotton, May 23, 2003, WTO Doc. No. WT/DS267/15.

⁶⁶ See Grary G. Yerkey and Christopher S. Rugaber, U.S. and Egypt Beginning to See "Eye-to-Eye" on Need for FTA but No Talks Scheduled Yet, 20 Int'l. Trade Rep. 1145 (July 3, 2003) (quoting Boutros-Gali, Egypt's [former] foreign trade minister, saying that Egypt wants to begin the [US FTA] negotiations "tomorrow". However, the U.S. has been cold toward negotiating an FTA with Egypt. Some hint that this so because Egypt withdrew its support of the U.S. in the Genetically Modified Organism case against the EC).

WTO members that negotiation is one option for resolving a trade dispute, but not the only option. Arab countries should employ negotiation and litigation at the same time because litigation plays an important role in informing negotiations.

There are some provisions in the Dispute Settlement Understanding of the WTO that give special treatment for developing and least-developed countries.⁶⁷ An important step has been taken to assist developing countries in WTO disputes settlement through the establishment of the Advisory Center on WTO Law.⁶⁸ Four Arab countries are members of the Advisory Center.⁶⁹ The Advisory Center resembles a law office that specializes in WTO law. Despite several limitations on the functions of the Advisory Center, Arab countries should consider becoming involved in the Center until they have their own in-house counsels and expertise in international trade law.

⁶⁷ For example, according to article 27.2 of the DSU, the WTO Secretariat provides assistance to developing countries through the legal advice of experts in dispute settlement. However, legal assistance from the WTO Secretariat is qualified "in a manner ensuring the continued impartiality of the Secretariat". In other words, legal assistance through the WTO Secretariat is not full but limited to the extent that the Secretariat's neutrality is not compromised.

⁶⁸ The Advisory Center is independent from the WTO, established as a foundation under Swiss law. The Advisory Center is open to all WTO members, but only developing countries and economies in transition can use its services. The Advisory Center sources of income are: user charges, revenues from an endowment fund, and traditional donor contributions. The Advisory Center organizes seminars on WTO jurisprudence, offers legal advice on WTO law, provides support in WTO proceedings, and permits internships for officials dealing with WTO legal issues. One of the criticisms directed toward the Advisory Center is that there may be real duplication between its work and the work of the WTO Technical Cooperation Division. Other criticisms are the limited number of professionals, and the estimated hours per case (700 hours for a simple case). Even more, the Advisory Center executive director will have the power to decide whether a case brought to the Center by a developing country has legal merit or not. See Kim Van der Borgh, *The Advisory Center on WTO Law: Advancing Fairness and Equality*, 2 J. INT'L ECON. L. 723, 724-727 (1999).

⁶⁹ Egypt, Tunisia, Jordan, and Oman are members of the Advisory Center. Egypt and Tunisia are original members of the Advisory Center, which signed the agreement establishing the Center, while Jordan was the first country to accede to the agreement, followed by Oman. Late Said El-Naggar of Egypt, former Appellate Body member, held a seat in the management board for two years term starting 2001. See <<http://www.acwl.ch/>> (Last visited May 4, 2005).

V. The Impact of the International Trading System on Arab Countries

The WTO created a new reality, and Arab countries cannot afford not to join.⁷⁰ Arab countries cannot get engaged in the multilateral trading system without being part of the WTO. With the world becoming more and more economically integrated, Arab countries will have the chance to be involved, and their interests represented appropriately.⁷¹ In an era of internationalizing the economy, any Arab country which does not join would be isolated.

Adhering to the rules of the WTO may enhance global confidence in the Arab countries, and thus is likely to increase foreign direct investment.⁷² As for individual Arabic citizens, one can imagine how consumers' lives would be if goods not made in their home countries became available at their fingertips. The loss of sovereignty is not specific to Arab countries, but for all countries joining the WTO.⁷³ Membership in the

⁷⁰ The following are the Arab countries that joined the WTO: Bahrain (Jan. 1, 1995), Djibouti (May 31, 1995), Oman (Nov. 9, 2000), Qatar (Jan. 13, 1996), United Arab Emirates (Apr. 10, 1996), and Jordan (Apr. 11, 2000). In addition there are seven other Arab countries in the process of joining: Algeria, Iraq, Lebanon, Libya, Saudi Arabia, Sudan, and Yemen.

⁷¹ Developing countries had noticeable impacts on developed countries in the WTO. For example, Guatemala and Ecuador, not satisfied with the settlement of the banana dispute, blocked the proposal of the EC to obtain a waiver for the Fiji Convention that gives preferential treatment for African, Caribbean, and Pacific (ACP) countries. Developing countries played an important role in the debate over the selection of the Director General for the WTO to replace Renato Ruggeiro in 1999. Additionally, developing countries aired their concerns toward the green room negotiations module in the Seattle Ministerial meeting. See *Strengthening Relations with Arab and Islamic Countries through International Law: E-Commerce, WTO Dispute Settlement Mechanism, and Foreign Investment* 182-183 (The International Bureau of the Permanent Court of Arbitration ed., 2002).

⁷² Personal choice, voluntary exchange, freedom to compete, and security of privately-owned property are the cornerstones of economic freedom. In a study conducted on economic freedom in the world, Jordan ranked 36 in 2002, Bahrain ranked 31, Morocco ranked 83, and Egypt ranked 74. See James Gwartney & Robert Lawson, *Economics Freedom of the World: 2004 Annual Report* 53, 81, 107, 120 (2004).

⁷³ The U.S. and other developed countries have much more to worry about in terms of sovereignty since they have many great issues at stake. For more on sovereignty see Jenik Radon, *Sovereignty: A Political Emotion, Not a Concept*, 40 STAN. J. INT'L L. 195, 203, 208 (2004) (despite the long history of the sovereignty concept, it has always been a term in search of a definition. The notion of sovereignty has always been problematic and ephemeral. The U.S. approach toward sovereignty is grounded on the legacy of American exceptionalism. For the U.S., joining the WTO met with opposition and suspicion. Joining the WTO amounted to the surrender of U.S. sovereignty. On

WTO would ensure Arab countries a fair forum for settling their potential trade disputes with other members who may wield more trading power. Reviewing some of the WTO cases would highlight this fact.⁷⁴ In addition, WTO agreements have safety valves, such as anti-dumping measures, that can be used provisionally to counter imports.

The multilateral trading system will have profound effects on the Arab countries collectively. For those countries that joined the WTO, this means that they will have to abide by its rules. For those that are outside of the WTO, they will have to undertake regulatory reforms. Benefits are likely to materialize once the Arab countries enact a broad package of laws and regulations. This does not mean that some Arab industries are not likely to be negatively affected. While it is recognized that adjustment to trade liberalization will be neither automatic nor painless, any negative impact on Arab import-competing industries may be compensated by exportable industries and governments by ensuring better access to capital, and establishing training programs to develop the skills of those dislocated. Measuring the impact of WTO accession on Arab countries in different sectors, such as financial services, intellectual property rights, and customs laws, just to mention few, requires extensive studies and analyses that are beyond the limits of this section.⁷⁵ Therefore, this section will analyze the implications of the WTO on Arab countries in selected sectors.

A. Agriculture

Until the Uruguay Round, agriculture was under softer disciplines. The WTO Agreement on Agriculture contains new regulations in this sector. The WTO Agreement on Agriculture covers three pillars: market access, export subsidies, and domestic support.⁷⁶

the other hand, for small countries, accession to regional and global bodies gives them more sovereignty). Under the Uruguay Round Agreements Act, any member of Congress can offer a joint resolution every five years to have the U.S. withdraw from the WTO. This is an example of U.S. concern over ceding its sovereignty by joining the WTO.

⁷⁴ See Report of the Appellate Body on United States-Import Prohibition of Certain Shrimp and Shrimp Products, Oct. 12, 1996, WTO Doc. No. WT/DS58/AB/R.

⁷⁵ For some sectoral studies on the WTO and Arab countries see *Opening Doors to the World: A New Trade Agenda for the Middle East* (Raed Safadi ed., 1998).

⁷⁶ Restrictions on market access of agriculture were in the form of tariffs and non-tariff barriers. WTO members agreed to tariffy non-tariff barriers in binding recorded schedules, with tariffs resulting from this process to be reduced by an average 36 per-

Arab countries' agriculture sectors are in primitive stages. Arab countries are facing an ever increasing challenge to acquire adequate food to feed their populations. Although some parts of the region have been historically exporters of agricultural products, now they are, to a large extent, dependent on staple food imports.⁷⁷ Many Arab countries post a trade deficit in farm products.

There are many reasons for the decline of agriculture in Arab countries. Agriculture policy in Arab countries, which is different from developed countries, plays a role in this state of affairs.⁷⁸ Arab agriculture

cent in case of developed countries and 24 percent for developing countries, with minimum reductions for each tariff line required. This process is known as the Uruguay Round formula. Regarding export subsidy, developed countries committed to reduction at a level of 36 percent below the 1986-1990 base level, and the quantity of subsidized exports by 21 percent over the same period. In the case of developing countries, the reductions are two-thirds of those of developed countries. The implementation period is six years for developed countries, starting Jan. 1 1995, and ten years for developing countries regarding direct export subsidy. Some WTO members calculated very high levels of equivalent tariffs in replacement of non-tariff barriers. To alleviate such a problem, members provided three approaches: current market access, minimum access quotas where current access is less than 3 percent of domestic consumption, and special treatment for some products such as rice. For more on the WTO Agriculture Agreement see Melaku Geboye Desta, *Food Security and International Trade Law: An Appraisal of the World Trade Organization*, 35.3 J. World Trade 450-452 (2001).

⁷⁷ See Roni N. Halabi, *Stability in the Middle East through Economic Development: An Analysis of the Peace Process, Increased Agricultural Trade, Joint Ventures, and Free Trade Agreements*, 2 DRAKE J. AGRIC. L. 275, 284 (1997) (twenty Arab countries purchased \$27.3 billion worth of agricultural products in 1993).

⁷⁸ For example, Arab countries tax farmers so that urban populations can purchase farm products at lower prices. In order to compensate for taxing farmers, Arab countries subsidize inputs, such as irrigation, thus providing artificially low-cost water. However, with taking on economic reforms under the aegis of international agencies, subsidizing inputs is no longer a viable approach. Moreover, Arab countries lack foreign exchange to subsidize agriculture. On the other hand, developed countries, such as the U.S. and EC, tax urban populations to ensure income support for farmers. Rather than subsidizing inputs, developed countries subsidize agriculture output. Therefore, domestic Arab farm products priced higher than imported ones. Developed countries' agricultural exporters "dump" their surplus productions in Arab countries' markets, eroding what is remaining of the agriculture sector in these Arab countries. Water scarcity in the region is another reason for the decline in agriculture. However, although it is valid, this is not all true. A further reason for insufficient grain harvest could be due to giving more emphasis on value-added crops such as fruits and vegetables. One could argue that this works for Arab countries' comparative advantage, since they have large pools of labor and little arable land. For more on the U.S. agricultural policy see J.W. Looney et al., *Agricultural Law: A Lawyer's Guide to Representing Farm Clients* 5-10, 191-205 (1990) (many of the U.S. support programs date back to the farm financial crises of the 1930s and 1980s. Certain reasons may provide an explanation for the divergent treatment of agriculture in the U.S. First, farming is viewed as a unique way of life dependant on natural forces which are

sectors are relatively subsidy-free while developed countries provide massive agricultural subsidies, thus causing lower prices, and harming farmers in Arab countries. Arab countries are experiencing a lack of young farmers. Many farming households derive most of their income from non-agricultural activities.⁷⁹ Arab agricultural technology, such as mechanization and large farm operations, is also not on the same level as that of their foreign counterparts, which results in high output costs and low international competitiveness. Additionally, exports of agricultural and fishery products from Arab countries face a myriad of safety and environmental regulations in foreign markets. For example, Oman was allowed to export wild shrimp to the U.S. in 2005, only after the State Department certified that its fishing operations do not threaten endangered sea turtles because Oman harvests shrimp using manual rather than mechanical means to retrieve nets.⁸⁰ Other regulatory measures imposed by the U.S. include mandatory country-of-origin labeling for meat and meat products. Safety and environmental regulations make it burdensome for agricultural and fishery products from Arab countries to penetrate foreign markets.

The measurement of the potential impact of liberalization in agricultural trade on Arab countries requires one to take into account various scenarios covering matters such as preferential market access, prices of food products, farm spending, bioengineered foods, safeguard measures, agricultural export credits, and food aid. Many Arab countries enjoy pref-

beyond the farmer's control. Farmers are also viewed as a stabilizing element in society because of their vital role in food and fiber production. Farmland is a major source of aesthetically and psychologically pleasing open space and locale for many non-farm recreational activities. Farmers are a distinct minority in the U.S. They constitute about 2 percent of the total population. Farmers receive specialized legal treatment as an attempt to protect them from the generally urban orientation of law and government. Lastly, their lack of participation beyond the production stage of agriculture is a contributing factor to their inability to attain adequate income).

⁷⁹ See Trade Policy And Economic Integration in the Middle East and North Africa: Economic Boundaries in Flux 186, 202 (Hassan Hakimian & Jeffrey B. Nugent eds., 2004).

⁸⁰ Under U.S. law, wild shrimp imports are barred if harvested in ways harmful to endangered sea turtles. However, the import bar is inapplicable if the State Department certifies that the harvesting nation has taken steps to reduce the incidental taking of turtles in shrimp trawling operations, such as the use of sea turtle excluder devices, or has a fishing environment that poses no threat to sea turtles, such as fishing in cold water regions not frequented by sea turtles. The shipment of shrimp must be accompanied by the State Department form DS-2031 signed by the exporter, importer, and government official from the harvesting nation. See Appropriations Act of 1990, Pub. L. No. 101-162, § 609, 103 Stat. 988 (1989).

erential access to the EC market as a result of successive trade deals.⁸¹ The erosion of such preferences is a matter of time, in part because of a willingness among nonrecipient countries to challenge such arrangements through the GATT/WTO dispute settlement.⁸² Moreover, existing preferences could be undermined by tariff reduction commitments in the Doha negotiations on agriculture. Therefore, Arab countries must press members of the WTO to retain preference margins, delay the erosion of preferences resulting from reductions in tariffs, and make compensation payments to beneficiary Arab countries.

As a result of further liberalization in agriculture, it is expected that the price tag of imported food products will increase. Arab net food-importing countries would likely to face some difficulties.⁸³ Therefore, in WTO trade negotiations, one could anticipate that some Arab countries would be in a defensive position or low-profile proponents of agricultural trade liberalization. Any reduction in subsidies by developed countries for their agriculture exporters would translate into a higher food import bill for Arab countries.

Arab countries, such as Saudi Arabia, have undertaken programs to become self-sufficient in agriculture. To achieve this goal, Arab countries

⁸¹ See Jacqueline Klosek, *The Euro-Mediterranean Partnership*, 8 INT'L LEGAL PERSP. 173 (1996) (The EC provides duty-free access to 46,000 tons per marketing year of olive oil imported from Tunisia). While market access preferences may benefit particular Arab suppliers at certain times, they generally offer limited additional real market access, and may not promote the long-term economic development of beneficiary Arab countries.

⁸² The EC struck bilateral agreements with certain Mediterranean countries such as Egypt, Jordan, Lebanon, Morocco, Algeria, and Tunisia. The U.S. charged the EC with making unfair use of Article XXIV of GATT by granting most-favored-nation treatment (MFN) to Mediterranean countries which are not members of the EC. In 1985, an arbitration panel of GATT ruled that the EC should change its tariff structure with certain Mediterranean producers of lemons and oranges to lessen the adverse effects these tariffs had on U.S. exports of these fruits to the EC. See Report of the Panel on European Community-Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region, Feb. 7, 1985, GATT Doc. No. L/5776 (unpublished GATT panel report).

⁸³ The WTO Agreement on Agriculture recognizes the negative effects of agricultural liberalization. For this reason, WTO members adopted the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reforming Program on Least-developed and Net Food-Importing Developing Countries. Statistics show that food prices rose sharply after entry into force of the WTO Agreement on Agriculture. Since then prices have been on the decline. For more on discussion the Ministerial Decision and the effects on food security see Desta, *supra* note 76, at 465-467. The list of net food-importing countries includes Djibouti, Mauritania, Somalia, Sudan, Egypt, Jordan, Morocco, and Tunisia. See WTO List of Net Food-Importing Developing Countries, Mar. 26, 2002, WTO Doc. No. G/AG/5/Rev.5.

may want to increase farm spending, which has little impact on trade and thus does not run afoul of WTO rules. For example, Arab countries could establish support programs that include measures such as agricultural research, restructuring aid, disease control, and regional assistance. These support programs could also include forms of direct payments to farmers as long as these payments are not linked to the type or amount of crops being grown.

Trade in genetically modified or bioengineered foods involves complex factors. These factors include lack of scientific certainty on the possible impact of agriculture biotechnology on human or animal health and the environment, involvement of huge economic interests in the biotech food trade, and the links that biotech food has to ethical and religious concerns and biodiversity preservation. Arab countries, such as Sudan, have imposed import bans or tight restrictions on genetically modified organisms ("GMOs") products. These Arab countries fear the contamination of local crops by GMO strains which could affect their ability to export agricultural products to the EC, where there are strict controls on bioengineered foods. Arab countries may need to approve biotechnology in order to boost food security. Bioengineered crops provide protection against pests, or tolerance to chemicals. For example, in 2004, Algeria and Tunisia experienced a slowdown in economic growth due in part to a locust infestation that curbed agricultural output. Approval of bioengineered crops could be accompanied by adequate labeling laws such as have been put in place in Saudi Arabia. As a safety measure, the areas of GMOs crops under cultivation could be separated from other areas of conventional crops. In addition, as a safety measure, GMOs could pass through safety and risk assessments before entering Arab countries.

Accession into the WTO would force the opening up of the domestic agricultural commodity markets. To ease the burden of liberalization, Arab countries can use the special safeguard mechanism included in the WTO Agreement in Agriculture to shield local farmers from surging agricultural products such as olive. Additionally, in WTO trade negotiations, Arab net food-importing countries could be proponents of special and differential treatment in agricultural export credits, offered through export credit agencies of developed countries, by arguing for longer maximum repayment terms, minimum annual repayment of principal and interest, favorable interest rates, and premium terms for food imports.

Some Arab countries, such as Jordan and Sudan, currently are recipients of food aid. As such, these Arab countries could argue for continuing food aid in the form of in-kind donations and cash payments when

negotiating new WTO rules regarding the use of food aid. Any agricultural trade reforms should not lead to a reduction in food aid delivered to Arab countries. Arab countries should resist any proposals that would limit food aid given in grants rather than credits, and food aid that takes the form of cash donations rather than in-kind food donations. Cash donations may take a longer time to reach targeted groups compared with in-kind donations. Moreover, Arab countries could argue that food aid should not be restricted only to defined emergencies and humanitarian crises.

B. *State-Owned Enterprises*

Arab countries face the dilemma of the public/private sector dichotomy. State-owned enterprises (SOEs) are perceived as a drag on the economy and the budget. Some believe in smaller government by reducing the number of civil servants. It is also perceived that the future of Arab countries' economies depends upon reform of SOEs. Usually, the public sector opposes trade liberalization, and the private sector backs it. When SOEs were set up in 1960s, they were arms of the state, and they generated 40 percent of the GDP.⁸⁴ These SOEs also account for a large share of urban employment.⁸⁵

The arguments then proceed along the following lines: These SOEs suffer from an inability to reduce overmanned offices coupled with bloated

⁸⁴ See *Doing Business With Egypt* 11, 17-25 (Marat Terterov ed. 2001).

⁸⁵ Public enterprises in Jordan employ a large number of employees. See Yitzhak Reiter, *The Palestinian-Transjordanian Rift: Economic Might and Political Power in Jordan*, 58 *The Middle East Journal* 72, 77 (2004) (the top 500 private-owned enterprises have JD5,814 million worth of assets with total employment of 44,839). See also David Butter, *The Public-Sector Problem in Syria*, 37:22 *MEED Middle E. Econ. Dig.* 2 (June 4, 1993) (Syria is saddled with a huge public sector. The public sector employs 631,000 people, excluding the armed forces. This number accounts for 31 percent of the total labor force. Public sector employees and all their dependants constitute 6 million people, out of Syria's total population of 13.5 million). SOEs play a major role in other Arab countries. For example, the public sector in Egypt comprises some 300 SOEs and employs 550,000 in the industrial sector alone. Libya intends to privatize roughly 360 SOEs. In Algeria, some 80 percent of industrial production remains in the public sector. See *Public Companies Open Further to Private Participation*, 36:19 *MEED Middle E. Econ. Dig.* 20 (May 15, 1992). See *Doing Business With Saudi Arabia* 5, 21 (Anthony Shoult ed., 2d ed., 2002) (the Saudi economy is currently in a state of transition as a consequence of the need to move from a focus on public to private sector activity. Annual government spending represents one-third of Saudi GDP. For example, in 1994, income payments to public sector employees accounted for around 50 percent of total government spending).

payrolls. In these enterprises, political skills are far more important than educational or managerial skills. The dilemma of the public/private sector dichotomy is further complicated if the public sector in Arab countries has an ethnic majority, while the private sector has a different ethnic structure. SOEs maintain advantages in obtaining government subsidies, land rights, loans from state banks, and legalized monopolies in sectors such as aviation and power. To put it bluntly, the private sector may not enjoy a level playing field.

The balance between the public/private sectors also means that it takes a longer time for reform to attain a socio-political balance. Taking into account the abilities of the private sector and of all the SOEs, the reality is that few may become conglomerates in a nasty international market that recognizes only one thing: being lean and mean. The goal should not be to squeeze one sector over the other. Rather, there must be a potentially long-term partnership on a broad range of activities between private enterprises and SOEs based on communication through workshops, cooperation, shared accountability, and mutual benefit.⁸⁶ In other words, a national economy must be a private/public sector-led economy. Moreover, creating a few large SOEs may lead to some Arab multinationals that would be globally competitive and have reduced inefficiencies.

SOEs could become an issue for some Arab countries in the WTO. If SOEs are also trading enterprises, WTO members would be concerned about their operation, government involvement in their operation, and whether they operate with commercial considerations. For example, Saudi Arabia's state trading enterprise for wheat could become an issue regarding the role of government in its operations.

The ability of Arab countries to compete in international trade depends on productivity, investment in human and physical capital, and research and development. Several indicators suggest a decline in the competitiveness of Arab countries. Intra-industry trade between 1985 and 1997 had been relatively slow, and shows little change when compared with Brazil, Taiwan, and Malaysia.⁸⁷ Many firms in Arab countries are dominated by individuals, compete based on price alone, and lack managerial and technological resources. Some domestic industries are mostly

⁸⁶ Long-term partnership may include outsourcing of non-essential functions to private sector companies so as to allow SOEs to focus on their essential functions. For example, notary services may be outsourced to private companies.

⁸⁷ See *Globalization and Firm Competitiveness in the Middle East and North African Region* 191-195 (Samiha Fawzy ed. 2002).

composed of family-owned small- and medium-sized enterprises.⁸⁸ They are concentrated in traditional labor-intensive industries such as textiles and apparel, wood products, and non-metallic mineral products. There are no available data on overall expenditures in research and development, or the number of patents awarded in Arab countries and those of Arabian origin.

Arab countries should focus their efforts on developing high-tech industries. Arab countries should also boost their support for research and development, and improve their engineering and science education. Competition will lead to increases in efficiency and creativity, which will force domestic industries to adapt with the new climate.⁸⁹

C. *International Trade in Oil*

Oil is the largest primary commodity traded internationally.⁹⁰ Some Arab countries are top suppliers of oil. They have a comparative cost advantage since oil in these countries is cheap to pump. Therefore, Arab oil-producing countries that are not yet members of the WTO, such as Algeria, Iraq, Libya, and Saudi Arabia, may have concerns over subjecting oil to market forces.

Since the GATT came into existence in 1947, there has been an informal understanding among contracting parties not to subject oil and natural gas to multilateral tariff concessions negotiations. However, it is a misconception to claim that all aspects of energy trade, whether oil or natural gas, are not covered or excluded by the WTO agreements. Over the years, developed and developing countries have increased the number of goods governed by the disciplines of multilateral trading systems.⁹¹ As a matter of fact, Kuwait associated itself with a 1987 GATT case that was concerned with the oil trade.⁹² If oil trade is not governed by GATT,

⁸⁸ For example, in Jordan 93 percent of establishments are small and medium-sized enterprises. *Id.*

⁸⁹ Through mergers, companies could be able to compete, invest in their production systems, and strengthen their financial positions.

⁹⁰ Fuel exports in 2002 stood at \$615 billion, accounting for 9.8 percent of world merchandise trade. See WTO Secretariat, *International Trade Statistics for 2003* 103, 114 (2003).

⁹¹ In its accession to the WTO in 2001, China committed to allocate tariff-rate quotas for crude oil. China agreed to allow in prescribed amounts of oil at lower tariff levels. Oil imports above the quota levels are subject to higher tariffs.

⁹² The Superfund case was brought by EC, Canada, and Mexico. A 1987 GATT panel found that tariffs mandated by the U.S. Comprehensive Environmental Response,

then the GATT panel would not have exercised jurisdiction in the matter. However, that case was limited to the consumer/importer side of the oil trade. There has not yet been a case involving the producer/exporter country side, for reasons such as setting prices or production targets.⁹³ Additionally, oil trade is subject to domestic trade remedy laws.⁹⁴ For example, in 1999, a consortium of independent U.S. crude oil producers alleged that companies in Saudi Arabia and Iraq, among other countries, were dumping crude oil subsidized by the Saudi and Iraqi governments in the U.S. market.⁹⁵

One certainly can claim that oil trade is an “ambivalent” trade.⁹⁶ On the one hand, oil trade is supposedly covered by WTO agreements. On

Compensation, and Liability Act, known as Superfund legislation, was in violation of article III.2 of GATT (the non-discriminatory article). The U.S. charged imported oil at a rate of 11.7 percent per barrel. On the other hand, it charged domestic oil at a rate of 8.2 percent. The case is cited briefly in Kwan Kiat Sim, *Rethinking the Mandatory/discretionary Legislation Distinction in WTO Jurisprudence*, 2 World Trade Rev. 33, 49-50 (2003). The other oil-related case is U.S.-Reformulated Gasoline case of 1996. However, the Reformulated Gasoline case was primarily concerned with an environmental measure. For more on this “environmental” case see Reconciling Environment and Trade 163-292 (Edith Brown Weiss & John H. Jackson eds., 2001).

⁹³ See Rossella Brevetti, DeFazio Asks for WTO Case Against OPEC Production Cuts, 21 Int'l Trade Rep. (BNA) 565 (Apr. 1, 2004) (Rep. Peter DeFazio, along with over 30 other House members, filed a letter with President Bush asking to launch a WTO case against OPEC. The letter alleges that OPEC supply restrictions are disguised restrictions on international trade violating article XI of GATT 1994. Moreover, the letter states that an article XX exception allowing restrictions for the conservation of exhaustible natural resources is inapplicable since OPEC is not restricting oil production due to conservation concerns or to preserve an exhaustible supply). If a WTO case is filed, although it is unlikely for its political and economically-destabilizing ramifications, it would be the first WTO case on the producer/supplier side.

⁹⁴ Oil trade includes here crude oil, oil derivatives, and oil country tubular goods that are used in the oil and gas industry such as tubes and drill pipes.

⁹⁵ The U.S. Department of Commerce denied the petition on the ground that there was no sufficient support from the domestic industry to initiate an investigation since opposition from U.S. producers exceeded support. On appeal, the CIT and Court of Appeals for the Federal Circuit affirmed the decision of the Commerce Department. See *Save Domestic Oil, Inc. v. United States*, 240 F. Supp. 2d 1342 (Ct. Int'l Trade 2002) (stating that this was the first case the Commerce Department had rejected a petition at the filing petition level). See also *Save Domestic Oil v. Commerce Department*, 357 F.3d 1278, 1284 (C. A. Fed. 2004) (the Commerce Department does not have a standard practice applicable to all industries of disregarding the opposition of domestic importer-producers with import levels beyond a certain percentage. There is an industry-specific analysis). One may speculate that the Commerce Department rejected the dumping petition because imposing an anti-dumping order would lead to political backlash from oil-producing countries as well as to an increase in the price U.S. consumers would pay at the pump.

⁹⁶ See Francis N. Botchway, *International Trade Regime and Energy Trade*, 28 SYRA-

the other hand, some oil production is managed by the Organization of Petroleum Exporting Countries (OPEC) through supply control measures, such as price targets or production quotas.⁹⁷ There are many factors that affect trade in oil.⁹⁸ OPEC Arab countries that are members of the WTO such as the United Arab Emirates and Qatar have not changed their oil policies because of joining the WTO. Therefore, Saudi Arabia and other oil-exporting Arab countries can argue that a precedent exists for not requiring oil-producing countries that acceded to the WTO to change their policies.

In acceding to the WTO, Arab countries may have to bind their tariffs on oil imports, meaning that tariffs cannot increase above a certain ceiling. Moreover, this implies that other oil-importing countries would reduce and bind their tariffs based on reciprocity, thus giving an advantage to Arab oil-exporting countries.⁹⁹ The U.S. and other developed countries should reduce their trade barriers to oil, such as high tariffs, discriminatory taxes on fossil fuels, carbon taxes, and subsidies for coal and nuclear energy.¹⁰⁰

CUSE J. INT'L. L. & COM. 1, 11, 12 (2001) (some of the theoretical reasons for the apparent ambivalent attitude of contemporary international trade regimes to energy trade include the definition of energy as good or service, which in itself is not without controversy, location of energy at the heart of government economic thinking, and energy as a vital national asset to be left to free international trade trajectories. Movements in international regulation of energy are more likely to come from regional or industry-determined economic blocs. The legal basis for OPEC is article XX(h) of GATT, which permits import or export restrictions legislated by commodity agreements. However, OPEC was not submitted for approved of the contracting parties as required by article XX(h) of GATT).

⁹⁷ See Oil: A Burning Question, *The Economist*, Mar. 27, 2004 at 71 (citing the OPEC cartel and its kingpin Saudi Arabia decision to cut production by 1 million barrel per day).

⁹⁸ For an overview of trade in oil see James M. Day, *Petroleum Prices*, 1 AM. U. BUS. L. BRIEF 52, 53 (2004) (discussing the petroleum industry and factors that affect the industry, such as traders, weather reports, expectations of war, OPEC, currency value, taxes, lack of refining capacity, and refiners' profits).

⁹⁹ For much of the twentieth century the U.S. maintained a tariff on oil imports to protect its petroleum industry against lower-priced competition from abroad. See Michael A. Toman, *International Oil Security: Problems and Policies*, 20 BROOKINGS REV. 20, 21 (2002).

¹⁰⁰ High tariffs are often maintained on processed products to keep value-added production and employment in a certain market, while low tariffs are kept on raw products. This is known as tariff escalation. Some oil-importing countries impose higher tariffs on processed oil in order to keep value-added production and employment in their markets. Exporting raw products may constitute a threat to Arab oil-exporting countries' economic stability because they are natural resources with little value added.

A sticking point in Algeria's and Saudi Arabia's accession to the WTO is a dual price policy for energy products such as gas and electricity, which the U.S. and EC claim provides an indirect subsidy to industrial producers and give them unfair advantage over foreign competitors. For example, prices of some fertilizers are directly linked to the price of energy. However, Algeria and Saudi Arabia may want to argue that WTO agreements do not address or prohibit dual price energy policies. If their argument proves fruitless, they will have to agree to language in their WTO accession that requires energy prices to be set according to commercial considerations in terms of production costs and profits, stage increases in gas prices for industrial users, and allow exceptions to permit current energy policies for non-industrial users and households, which would be based on social considerations.

Energy services have never existed as a separate negotiating chapter with a clear classification in the General Agreement on Trade in Services (GATS). However, developed countries could demand Arab countries open up foreign investment in oil exploration, extraction, production, and gas development projects. In their accession, Arab countries should resist such demands for reasons of important national policy. Oil extraction and production can be classed as strategic. Arab countries will not have to provide equal access to U.S. firms for the exploration, exploitation and processing of oil or natural gas found in their territories. Moreover, Arab countries can argue that limiting market access in energy services is attributed to limits in their constitutions.¹⁰¹ Arab countries can carve out certain strategic energy-related activities from liberalization commitments.

VI. *Arab Public Opinion and the WTO*

Although globalization has no specific definition, the most used meaning is economic globalization. Trends of Arab public opinion regarding globalization, and the WTO specifically, are mixed. In public, Arab government officials speak the jargon of economic reform and free trade. On the other hand, the Arab civil society expresses a pessimistic attitude toward the multilateral trading system.

¹⁰¹ Constitutions of several Arab countries provide a provision that natural resources are the property of the nation. See Bahrain Const. art. 11, Kuwait Const. art. 21, and Qatar Const. art. 29.

There are some reported incidents of an Arab anti-globalization movement, and its visible presence, the WTO. In 2002, Arab activists from Tunisia, Morocco, Lebanon, and the Palestinian territories met in Beirut and established a permanent Arab network, called the Arab Forum, to resist globalization, and, implicitly, the WTO.¹⁰² The Arab Forum spelled out its objectives: to exchange and coordinate information among organizations of Arab civil society, to represent a unified Arab position from an unofficial Arab perspective, and to lead protests against globalization.

Even though there might not be an effective way to determine the pattern of Arab public opinion regarding globalization and the WTO, there is evidence leading to the conclusion that anti-WTO/anti-globalization sentiment exists among a large portion of the Arab population. For example, the majority of the population in Jordan has less confidence in globalization than the populations of India, Mali, Argentina, and Bolivia.¹⁰³

The Arab civil society is believed to have little enthusiasm for the general free trade agenda that the WTO encourages.¹⁰⁴ It does not acknowledge the benefits the WTO offers.¹⁰⁵ Trade liberalization is perceived as a threat to cultural traditions.¹⁰⁶ Arab countries should guard their sovereignty and protect domestic industry from a flood of foreign imports.

Arab activists fight against corporate greed that is destroying jobs and wages. Arab activists recognize that globalization contributes to rising job insecurity. Arab activists consider trade as a threat to jobs. The WTO, as an institution, needs an overhaul to be able to address the interests of Arab countries. Otherwise, the WTO will poison Arab public opinion on

¹⁰² See Mustafa Abdalla Abulgasem, *The Arab-Mediterranean Countries between the Conditions of the Barcelona Process and the WTO: A Comparative Study*, Conference on the Arab Countries and the World Trade Organization: Economic and Social Impact and the Prospects for Inter-Arab Cooperation, Institute of Arab and Islamic Studies, University of Exeter, U.K. (Sep. 23-25, 2002) (on file with author).

¹⁰³ See Alan M. Field, Can Trade Bridge the Gap?, *The Journal of Commerce* 18 (July 21, 2003) (a study found that Jordanians ranked last among the forty-four countries surveyed when it came to assessing the effects of globalization on their country. Sixty-four percent of Jordanians said it was bad compared with only twenty-seven percent who said globalization was good).

¹⁰⁴ See David R. Karasik, *Securing the Peace Dividend in the Middle East: Amending GATT Article XXIV to Allow Sectoral Preferences in Free Trade Areas*, 18 MICH. J. INT'L L. 527, 545 (1997).

¹⁰⁵ Id.

¹⁰⁶ Prince Bandar Bin Salman Bin Mohammad Al-Saud remarked that each country has its own experience, and the way it deals with foreign investment, e-commerce, and WTO corresponds with its system, culture, and belief. See The International Bureau of the Permanent Court of Arbitration, *supra* note 71, at 4.

globalization and free trade, and this is likely to provoke a backlash against more open economies.

The WTO, as imperfect as it is now, is a better alternative to bilateral trade agreements signed between developed countries and Arab countries. These include, for example, the U.S.-Jordan Free Trade Agreement, the U.S.-Bahrain Free Trade Agreement, the association agreements with the EC, free trade agreements with the European Free Trade Association (EFTA). In current bilateral trade agreements, economic hegemonies such as the U.S. or EC dictate the rules and use them to their advantage. For example, the EC association agreements adopt a selective agricultural import policy by setting limits to the type and volume of farm products imported into the EC market. The EFTA-Lebanon Free Trade Agreement of 2004 includes intellectual property provisions that would restrict the rights of poor farmers, and limit access to generic medicines.¹⁰⁷

Conclusion

Legally, all Arab countries should be able to accede to the WTO. According to article XII of the WTO Charter, any state having full autonomy in the conduct of external commercial relations may accede to the WTO. This article kick-starts the accession process. However, pragmatically, there are other prerequisites, such as human rights, religious freedom, democracy, and no-trade boycotts. Since Arab countries have their own cultures and do not share all western values, they are banned from joining the WTO. It seems that WTO accession is a power-based process, rather than a rule-based process, as some legal scholars and WTO members would claim. The U.S. backing of Arab countries to accede to the WTO is based on American foreign policy rather than commercial considerations. Syria, for example, is an important trade player in the region but still outside the WTO club. Until other Arab countries join the trade body, the universality theme of the WTO is simply a utopian dream.

¹⁰⁷ For discussion on the U.S.-Bahrain Free Trade Agreement See David Price, *The U.S.-Bahrain Free Trade Agreement and Intellectual Property Protection*, 7. 6 J. WORLD INTELLECTUAL PROPERTY 829, 830 (Nov. 2004) (the FTA between the U.S. and Bahrain includes provisions and conditions which will require Bahrain to make significant changes to its intellectual property laws and their enforcement. Many of these required changes go far beyond the international benchmark of intellectual property right protection as enshrined in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights).

Institutions are never perfect. The way the WTO as an institution runs its business may not be perfect either. Certainly, the WTO needs a tune-up to project a new image toward the Arab countries. The WTO should permit accession of Arab countries into the organization at an accelerated rate. In addition, the WTO Secretariat should have more staff from Arab countries, aside from French and Britons who hold most positions. If the WTO were to hold a future Ministerial Conference in one of the Arab countries, it should do so in a genuine and appropriate manner. To illustrate, the fourth Ministerial Conference was held in Qatar because of a fear that anti-globalization protestors might disrupt the proceedings of the Conference, as it happened in the Seattle Ministerial Conference, not because the WTO wanted to integrate Arab countries further into the multilateral trading system, a claim advanced by WTO members. Although for practical reasons the WTO uses “mini-ministerial” meetings, where dozens of members are invited, the WTO should use them to a minimum since they exclude Arab countries. The WTO should include Arabic, a language spoken by 280 million people, as a working language along with the other three working languages (English, Spanish, and French) in the trade body.

Joining the WTO is a two-way street. Adhering to the rules of the WTO may enhance global confidence in the Arab countries, with the likely result of increasing foreign direct investment. Consumers in Arab countries would enjoy access to a wide variety of products that may otherwise be unavailable. Thus, trade can have an overall positive effect. However, the dilemma is how to minimize any possible losses and capture any benefits the multilateral trading system offers. Economic reform and trade liberalization must take into account social upheaval if hundreds of thousands of SOE employees are tossed out of work quickly without adequate guaranteed pensions. There will be losers among Arab import-competing industries, but winners among industries and governments should compensate for the loss. Firms facing layoffs should give their employees sufficient advance notice. Exportable industries should employ or absorb those who face dislocations. Governments can aid those who face dislocations because of increased competition by ensuring better access to capital. Additionally, governments of Arab countries should introduce policies aimed at cushioning the most vulnerable groups from the effects of trade liberalization by establishing adequate income support, health insurance coverage, re-employment projects, and training programs to develop the skills of those dislocated.

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